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BEFORE THE ARIZONA CORPORATION COMMISSION

2005 FEB -2 P 3: 39

COMMISSIONERS

AZ CORP COMMISSION
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Arizona Corporation Commission

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CAI

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

) DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR A
VARIANCE OF CERTAIN REQUIREMENTS
OF A.A.C. R14-2-1606.

) DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE
ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR.

) DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR
A VARIANCE OF CERTAIN ELECTRIC
COMPETITION RULES COMPLIANCE
DATES.

) DOCKET NO. E-01933A-02-0069

IN THE MATTER OF THE APPLICATION
OF TUCSON ELECTRIC POWER
COMPANY FOR APPROVAL OF ITS
STRANDED COST RECOVERY.

) DOCKET NO. ~~E-01933A-98-0471~~

SUPPLEMENTAL FILING AND REQUEST FOR OFFICIAL NOTICE

The Arizona Electric Power Cooperative, Inc. ("AEPCO") submits this Supplemental Filing and requests that the Administrative Law Judge take Official Notice of the Arizona Court of Appeals' January 25, 2005 mandate in *Phelps Dodge Corporation, et al. v. AEPCO, et al.*,

1 207 Ariz. 95, 83 P.3d 573 (2004) (the "Electric Competition Rules Appeal"). A copy of the
2 mandate is attached as Exhibit A.

3 This proceeding was commenced by Procedural Order dated June 18, 2003. In Decision
4 No. 65743, the Commission directed that a hearing be held concerning the continuation of the
5 Arizona Independent Scheduling Administrator ("AISA") and whether Affected Utilities
6 including AEPCO had complied with their responsibilities concerning the AISA under
7 A.A.C. R14-2-1609.C-J. ("Rule 1609"). Staff filed its report in this matter on May 30, 2003 and
8 five other parties including AEPCO filed testimony and participated in the hearing on
9 September 11 and 12, 2003. A recommended opinion and order has not been issued.

10 One of the issues involved in the Electric Competition Rules Appeal was whether the
11 Commission had the authority to enact Rule 1609. In its opinion, the Court of Appeals stated
12 that, "In sum, we hold that the Commission lacked constitutional or legislative authority to
13 promulgate R14-2-1609 (C) - (J)" and concluded that "these provisions are therefore invalid."
14 *Id.*, 207 Ariz. at 113, 129, 83 P.3d at 591, 607.

15 In light of the fact that the Court of Appeals opinion declaring the AISA requirements of
16 Rule 1609 to be invalid has become final, AEPCO's position is that this proceeding is now moot.

17 RESPECTFULLY SUBMITTED this 2nd day of February, 2005.

18 GALLAGHER & KENNEDY, P.A.

19
20 By Michael M. Grant
21 Michael M. Grant
22 Todd C. Wiley
23 2575 East Camelback Road
24 Phoenix, Arizona 85016-9225
Attorneys for AEPCO

1 **ORIGINAL + 21 COPIES** of the foregoing
Supplemental Filing filed this 2nd day of
2 February, 2005, with Docket Control.

3 **COPIES** of this Supplemental Filing delivered
this 2nd day of February, 2005, to:

4 Ms. Teena Wolfe
5 Administrative Law Judge
Arizona Corporation Commission
6 1200 West Washington
Phoenix, Arizona 85007

7 Jason Gellman
8 Legal Division
Arizona Corporation Commission
9 1200 West Washington
Phoenix, Arizona 85007

10
11 **COPIES** of this Supplemental Filing mailed this
2nd day of February, 2005, to each party
12 listed on the June 18, 2003 Procedural Order.

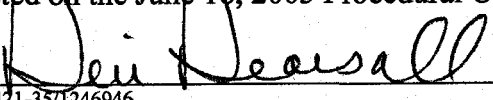
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EXHIBIT A

FILED

JAN 25 2005

IN THE
Court of Appeals
STATE OF ARIZONA
DIVISION ONE

PHILIP G. URRY, CLERK
By *J. Jan*

PHELPS DODGE CORPORATION; PHELPS DODGE) Court of Appeals
MORENCI, INC.; PHELPS DODGE, formerly) Division One
known as CYPRUS CLIMAX METALS) 1 CA-CV 01-0068
CORPORATION and formerly known as) Maricopa County
CYPRUS SIERRITA CORPORATION and) Superior Court
formerly known as CYPRUS BAGDAD COPPER) CV1997-03748
CORPORATION and formerly known as)
CYPRUS MINERAL PARK CORPORATION; AJO)
IMPROVEMENT COMPANY; MORENCI WATER &)
ELECTRIC COMPANY; ASARCO INCORPORATED;)
ARIZONA MINING ASSOCIATION; ARIZONA)
ASSOCIATION OF INDUSTRIES and ARIZONANS)
FOR ELECTRIC CHOICE AND COMPETITION)
(collectively "AECC"),)
)
Intervenors-Appellants,)
Cross Appellees,)
)
RESIDENTIAL UTILITY CONSUMER OFFICE,)
)
Intervenor-Appellant,)
)
THE ARIZONA CORPORATION COMMISSION, an)
agency of the State of Arizona,)
)
Defendant-Appellant,)
Cross Appellee,)
v.)
)
ARIZONA ELECTRIC POWER COOPERATIVE,)
INC.; DUNCAN VALLEY ELECTRIC)
COOPERATIVE, INC.; GRAHAM COUNTY)
ELECTRIC COOPERATIVE, INC.; SULPHUR)
SPRINGS VALLEY ELECTRIC COOPERATIVE,)
INC.; and TRICO ELECTRIC COOPERATIVE,)
INC.,)
Plaintiffs-Appellees,)
Cross Appellants,)
)
ARIZONA CONSUMERS COUNCIL,)
)
Plaintiff-Cross Appellant.)
)
_____)

MANDATE

TO: The Honorable Maricopa County Superior Court, Arizona in relation to Cause No. CV1997-03748.

GREETING: The above cause was presented in your Court and was brought before Division One of the Court of Appeals of the State of Arizona in the manner prescribed by law. This Court rendered its OPINION and caused the same to be filed on January 27, 2004.

The motion for reconsideration was denied and notice thereof was given on . A petition for review was filed. The record was forwarded to the Arizona Supreme Court. By order, dated January 4, 2005, the Arizona Supreme Court denied the petition for review. Arizona Supreme Court No. T-01-0001-CV.

NOW, THEREFORE, YOU ARE COMMANDED that such proceedings be had in said cause as shall be required to comply with the decision of this court, a copy of the OPINION being attached hereto.

Plaintiff-Cross Appellant Arizona Consumers Council

COSTS: \$349.46
ATTORNEY'S FEES: \$2,250.00

IT IS ORDERED that the original of the foregoing MANDATE and a copy of the OPINION of the Court were mailed to the Clerk of Maricopa County Superior Court, Arizona on January 25, 2005. A copy of the MANDATE and OPINION was mailed to the Honorable Colin F Campbell, Presiding Judge, and a copy of the MANDATE was mailed on said day to each party appearing or the attorneys of record.

(SEAL)

PHILIP G. URRY, CLERK

By *Geary Fan*
Deputy Clerk